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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,237	09/10/2003	Yasuhiro Mori	MTS-3302US1	3510
23122	7590	09/20/2007	EXAMINER	
RATNERPRESTIA			NAQI, SHARICK	
P O BOX 980			ART UNIT	PAPER NUMBER
VALLEY FORGE, PA 19482-0980			3736	
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			09/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/659,237

Applicant(s)

MORI, YASUHIRO

Examiner

Sharick Naqi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-14, 28, 52 and 54-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 6-14, 28, 52 and 54-71 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Examiner acknowledges the Amendment filed on June 28, 2007.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 6-7 and 9-14, drawn to a vital signs processing apparatus, classified in class 600, subclass 300.
- II. Claims 8-14, 28 and 54, drawn to a system that determines when vital signs are outside a predetermined range, classified in class 340, subclass 573.1.
- III. Claims 8-14, 28, 52, 55-59, drawn to system for generating a health control program for a user, classified in class 600, subclass 300.
- IV. Claims 60-71, drawn to a method for controlling the health of a user of a vital signs processing apparatus, classified in class 600, subclass 300.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are directed to related apparatuses for vital sign processing.

The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP §

806.05(j). In the instant case, the inventions as claimed have a materially mode of operation and are mutually exclusive because Invention I does not require an external server with means configured for determining whether detected vital signs are within a predetermined range for the user or means configured for changing the predetermined program transferring changed program via a third communication means when detected vital signs are outside the range as in Invention II. And Invention II does not require the buffering means and storage means comprising a removable medium which can be detached and is transferable between the vital sign detecting and vital sign processing means as in Invention I. Additionally there is nothing of record to show them to be obvious variants.

Inventions I and III are directed to related apparatuses for vital sign processing. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have a materially mode of operation and are mutually exclusive because Invention I does not require an external server configured to generate a health control program comprising exercise indices, an exercise menu, and health control indices, the exercise indices directing an exercise routine of the user as in Invention III. And Invention III does not require the buffering means and storage means comprising a removable medium which can be detached

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and is transferable between the vital sign detecting and vital sign processing means as in Invention I. Additionally there is nothing of record to show them to be obvious variants.

Inventions I and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the materially different apparatuses of invention II and III can practice the method of Invention IV.

Inventions II and III are directed to related apparatuses for vital sign processing. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed have a materially mode of operation and are mutually exclusive because Invention II does not require an external server configured to generate a health control program comprising exercise indices, an exercise menu, and health control indices, the exercise indices directing an exercise routine of the user as in Invention III. And Invention III does not require an external server with means configured for determining whether detected vital signs are within a

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predetermined range for the user or means configured for changing the predetermined program transferring changed program via a third communication means when detected vital signs are outside the range as in Invention II. Additionally there is nothing of record to show them to be obvious variants.

Inventions II and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the materially different apparatuses of invention I and III can practice the method of Invention IV.

Inventions III and IV are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the materially different apparatuses of invention I and II can practice the method of Invention IV.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required

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because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharick Naqi whose telephone number is 571-272-3041. The examiner can normally be reached on 8:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SN
September 17, 2007



Michael Astorino